

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the License
of Jenny Kirk to Provide Family Day Care

**FINDINGS OF FACT,
CONCLUSIONS AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick at the Lyon County Courthouse in Marshall at 9:30 a.m. on September 5, 1995. Kathryn M. Keena, Lyon County Attorney, 607 West Main Street, Marshall, Minnesota 56258, appeared on behalf of the Lyon County Department of Human Services ("Agency, County"). No one appeared on behalf of the Applicant, Jenny Kirk, 420 Central Avenue South, Balaton, Minnesota 56115. The record in this matter closed on September 9, 1996, with the receipt of a letter from the County indicating there had been no appearance by Applicant at the hearing location. on the morning of September 5, 1996.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with John Petraborg, Acting Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On approximately April 1, 1996, the Agency recommended denial of family day care licensure for Jenny Kirk. Notice of and Order for Hearing, Exhibit A. The recommendation was based upon the Minnesota Department of Human Services (DHS) disqualification of Jenny Kirk from direct contact with persons in care. The disqualification was based upon DHS findings that a preponderance of the evidence indicated that Jenny Kirk had perpetrated or aided in the commission of a murder and that a preponderance of the evidence indicated that she had perpetrated serious maltreatment. *Id.* DHS denied Jenny Kirk's application for a family day care license on April 19, 1996.

2. There is no evidence in the record indicating that Jenny Kirk appealed the disqualification from DHS issued March 20, 1996.

3. Jenny Kirk took this contested case appeal from the DHS license denial. A Notice of and Order for Hearing was issued on May 15, 1996, setting this matter on for hearing September 5, 1996. The Notice of and Order for Hearing contained the following language:

(11) A Notice of Appearance must be filed with the Administrative Law Judge within 20 days of service of the Notice of and Order for Hearings if a party intends to appear at the hearing.

(12) Failure to appear at the hearing may result in the allegations of the Notice and Order for Hearing and Exhibit A being taken as true. This means that the action being appealed will be upheld.

Notice of and Order for Hearing, at 2.

4. No Notice of Appearance has been filed by or on behalf of Jenny Kirk in this matter. The Administrative Law Judge inquired of Jenny Kirk, by letter dated August 21, 1996, if a Notice of Appearance would be forthcoming. Jenny Kirk telephoned the Administrative Law Judge on September 4, 1996, and stated that she did not intend to appear at the hearing due to her inability to retain counsel. The Administrative Law Judge informed her of the possibility of default. Jenny Kirk stated she would send a letter withdrawing her appeal. No such letter has been received by the Administrative Law Judge.

5. On September 9, 1996, the Administrative Law Judge received a letter from the Agency indicating that neither Jenny Kirk nor anyone on her behalf appeared at the hearing location on September 5, 1996.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.57-14.62 and Minn. Stat. § 245A.05.

2. The Notice of Hearing was proper and all substantive and procedural requirements of law and rule have been fulfilled.

3. Under Minn. Rule 1400.6000, the Administrative Law Judge is authorized to disposed of contested cases where a party defaults. A default occurs where a party has failed to appear at a hearing. Minn. Rule 1400.60000. Jenny Kirk is in default in this matter.

4. Taking the allegations in the Notice of and Order for Hearing as true, the Agency has established by a preponderance of the evidence that Jenny Kirk is properly disqualified from direct contact with children in care. Under Minn. Stat. § 245A.04,

subd. 3b(3), the disqualification cannot be set aside in a license appeal. Since Jenny Kirk is disqualified from direct contact with persons in care, she cannot receive a family day care license from DHS.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Human Services AFFIRM the denial of the Family Day Care license application of Jenny Kirk.

Dated this th day of September, 1996

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.